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Daniel C. Birkestrand

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IBM CORPORATION, INTELLECTUAL PROPERTY LAW
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DANIEL C. BIRKESTRAND, RANDALL L. GRIMM,
DAVID O. LEWIS, and TERRY L. SCHARDT

Appeal 2009-007928
Application 10/650,541
Technology Center 2400

Before, ROBERT E. NAPPI, MARC S. HOFF, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

NAPPI, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the final rejection of claims 28-51.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm the Examiner's rejection of these claims.

INVENTION

The invention is directed to a computer readable storage medium, method, and apparatus that allow computerized resources to be accessed on-demand. Additionally, on-demand resources that are not authorized can still be accessed for a grace period. *See* Spec: 1-6. Claim 28 is representative of the invention and reproduced below:

28. A computer readable storage medium containing a program which, when executed, performs an operation for providing access to an on-demand resource on a computerized apparatus, the operation comprising:

recording a compliant state of the computerized apparatus, with respect to the on-demand resource, in which a system function uses the on-demand resource with authorization, wherein on-demand resource is a hardware component of the computerized apparatus;

determining an in compliant state of the computerized apparatus, with respect to the on-demand resource, in which the system function uses the on-demand resource without authorization; and

initiating a grace period during which the system function continues to use the on-demand resource while in the in compliant state; wherein the computerized apparatus transitions from the compliant state to the in compliant state and then initiates the grace period in a manner providing continuous availability of the on-demand resource to the system function.

² Claims 1-27 were previously cancelled.

REFERENCES

Circenis	US 7,146,496 B2	Dec. 5, 2006 (filed Jan. 23, 2003)
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REJECTION AT ISSUE

Claims 28-51 are rejected under 35 U.S.C. § 102(e) as being anticipated by Circenis. Ans. 3-6.

ISSUES

Appellants argue on pages 11-16 of the Appeal Brief and pages 2-4 of the Reply Brief that the Examiner's rejection of claims 28-51 are in error. Appellants select claim 28 as representative of the group comprising claims 28-51. App. Br. 12. Appellants argue that Circenis does not disclose using an on-demand resource without authorization. App. Br. 15; Reply Br. 3. Additionally, Appellants argue that Circenis does not disclose using the on-demand resource continuously for a grace period after the computerized apparatus is in an in compliant state. App. Br. 15; Reply Br. 4.

Thus, with respect to claims 28-51, Appellants' contentions present us with two issues. (1) Did the Examiner err in finding that Circenis discloses using an on-demand resource without authorization? (2) Did the Examiner err in finding that Circenis discloses initiating a grace period during which the system function continues to use the on-demand resource while in the in compliant state; wherein the computerized apparatus transitions from the compliant state to the in compliant state and then initiates the grace period in a manner providing continuous availability of the on-demand resource to the system function?

ANALYSIS

Appellants' arguments have not persuaded us of error in the Examiner's rejection of claim 28. Claim 28 requires the use of the on-demand resources without authorization. The Examiner finds that Circenis discloses components, i.e., on-demand resources, which are used as a matter of right. Ans. 6. These components are the "authorized" components since these predetermined number of components have been paid for by the user. Ans. 6-7. The use of these components indicates a compliant state. Ans. 6. Circenis also discloses Instant Capacity On Demand (ICOD) components that are used outside of the matter of right. Ans. 7. These components, when used and no temporary balance is available, indicate a non-compliant state since they are not authorized because no payment has been received. Ans. 7. Therefore, the Examiner finds that when components are used outside of the matter of right and with a negative temporary balance, on-demand resources are being used without authorization. Ans. 6-7. Appellants argue that the ICOD components are being used with authorization since allowing an account to go below zero is effectively increasing the temporary account's balance. App. Br. 14-15.

Appellants argue that the Examiner is interpreting "authorization" to mean accessing "'additional components' without payment." Reply Br. 3. However, the Examiner actually finds that the on-demand components are authorized when payment is received. Ans. 7. Therefore, the Examiner also finds that the on-demand components are not authorized when payment is not received. Ans. 7. As a result, when the temporary account balance goes below zero, no payment is received, and the components accessed are not authorized. Thus, Appellants' arguments are not persuasive.

Claim 28 further requires initiating a grace period to allow continuous use of the on-demand resource when in an in-compliant, or non-authorized, state. Appellants argue that Circenis does not disclose this limitation because the ICOD components are only used in a non-compliant state. App. Br. 15; Reply Br. 4. However, as noted above, the ICOD components are used in a compliant state and become in-compliant when the temporary balance account goes below zero, thus payment is not received for access to the ICOD components. Ans. 7-8. Additionally, the Examiner finds that after the temporary account reaches zero the components may be used until the account reaches an indicated negative level. Ans. 8. Therefore, the Examiner finds that the time it takes to go from zero to an indicated negative level in the temporary account is the grace period. Ans. 8. Thus, we do not find Appellants' argument to be persuasive.

For the reasons stated above, we sustain the Examiner's rejection of claim 28 and claims 29-51 that have been grouped with claim 28.

CONCLUSION

The Examiner did not err in finding that Circenis discloses using an on-demand resource without authorization.

The Examiner did not err in finding that Circenis discloses initiating a grace period during which the system function continues to use the on-demand resource while in the in-compliant state; wherein the computerized apparatus transitions from the compliant state to the in-compliant state and then initiates the grace period in a manner providing continuous availability of the on-demand resource to the system function.

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Application 10/650,541

SUMMARY

The Examiner's decision to reject claims 28-51 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136 (a)(1)(iv)(2010).

AFFIRMED

ELD

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